Additional comments by Senator Nick Xenophon

Water Amendment (Water for the Environment Special Account) Bill 2012

The Prime Minister's announcement of 26 October 2012 that an additional 450 gigalitres (GL) of water is to be returned to the Basin during the period 2014-2024 can potentially bring about significant improvements in the health of the River Murray. However, this potential is limited due to a number of constraints and ambiguities in the Water Amendment (Water for the Environment Special Account) Bill 2012 (the 'Special Account Bill').

No guarantee 450GL will be delivered

According to the current wording of the Special Account Bill, enhanced environmental outcomes will be achieved by "increasing the volume of the Basin water resources that is available for the environmental use by up to 450 gigalitres" (emphasis added).[1]

Mr Rob Fowler, President of the Conservation Council of South Australia, expressed the inadequacy of this wording:

> The 450 gigalitre object is not framed in a way in the bill which provides any assurance or guarantee that it will in fact be delivered. It is not even framed as an object of the bill; it is simply framed as one means of achieving the broader objects of the bill.[2]

Recommendation 1

Clause 86AA(3)(b) of the Water Amendment (Water for the Environment Special Account) Bill 2012 be amended so as to ensure 450 gigalitres is a minimum amount rather than a maximum amount to be returned to the environment.

Purposes of the Water for the Environment Special Account

Clause 88AD of the Special Account Bill sets out the purposes of the Water for the Environment Special Account and lists the different types of activities eligible to receive payments from the $1.77 billion fund. These activities include improving the water efficiency of irrigation infrastructure (including roads and bridges), increasing dam capacity, acquiring interests in land and purchasing water rights.

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1 Clause 86AA(3)(b).

2 Mr Rob Fowler, *Proof Committee Hansard*, 8 November 2012, p. 10.

Professor John Williams, Dean of Adelaide Law School and vice-president of the Australian Association of Constitutional Law, summarised the issues with clause 88AD in his recent article in The Advertiser:

> These are obvious activities that would be required to deliver the additional water for the Murray. However, the Bill does not prioritise these activities. The temptation to focus on infrastructure rather than reducing the over-allocation of the river may prove irresistible. Further, the link between the expenditure of the funds and measurable outcomes for the health of the River is poorly made.[3]

These concerns were shared by Mr Tim Kelly, Chief Executive Officer of the Conservation Council of South Australia:

> The additional 450 gigalitres of water from a special account may never be achieved, even if up to $1.77 billion is spent on additional infrastructure. There is no absolute requirement in the special account bill for these funds to be spent to achieve the additional water.[4]

As a result I propose an amendment to clause 88AD requiring that priority be given to projects with maximum guaranteed water returns to the system within the shortest timeframe, taking into account social and economic factors, as well as early adopters of water efficiency measures.

Recommendation 2

Clause 88AD of the Water Amendment (Water for the Environment Special Account) Bill 2012 be amended to ensure that funding priority is given to projects with maximum guaranteed water returns to the system within the shortest timeframe, taking into account social and economic factors, as well as early adopters of water efficiency measures.

It is again worth noting the consistently glib attitude taken by both the Federal Government and the MDBA when it comes to recognising irrigators for past efficiencies and investigating the comparative efficiencies of different irrigation regions. I again refer to evidence given by the MDBA's Chief Executive, Dr Rhondda Dickson, during Senate Estimates in May of this year:

> **Senator XENOPHON:** No, but you can establish how efficient an area is and when it became efficient, can't you? That is a matter of fact, isn't it?

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3 Professor John Williams, "River Murray agreement to waterproof SA may turn out to be a castle built on sand", Adelaide Advertiser, 12 November 2012.

4 Mr Tim Kelly, CEO of the Conservation Council of South Australia, *Committee Hansard*, 12 November 2012, p. 9.

> **Dr Dickson:** You could presumably do that. But I guess, as to how you might rank efficiencies, that is not really our job. It is more to look at what is a sustainable level of extraction rather than who is the most efficient.[5]

This issue has not been addressed in these Bills.

Recommendation 3

Urgent modelling is undertaken to establish the comparative efficiencies of irrigation communities in the Murray-Darling Basin to ensure fair treatment of irrigators.

It is also imperative that local knowledge is taken into account through consultation with irrigator groups throughout any regulatory reforms of the Murray. For example, Mr Mark de Lacy McKenzie, Chief Executive of Murray Valley Wine Growers Inc told the Senate Rural and Regional Affairs and Transport Committee recently:

> There is a classic example downstream on the South Australian border here which is the Lindsay Island issue you have probably heard about. We have a huge wetland on Lindsay Island which can be, with check banks and regulators, effectively irrigated. Rather than an overbank flow at 1,200 gigalitres to achieve that naturally it can be done with 95 gigalitres. We have circumstances like that all through the basin.[6]

Furthermore, given the current inability of many South Australian irrigators to access funding provided through the Federal Government's $5.8 billion Sustainable Rural Water Use and Infrastructure Program due to irrigators' already high levels of efficiency, it is imperative that funding is made available for research and development via the Water for the Environment Special Account.

Recommendation 4

Clause 86AD(2)(a) of the Water Amendment (Water for the Environment Special Account) Bill 2012 be amended to include projects in Research and Development or projects using emerging technologies and to acknowledge and reward early adopters of water efficiency measures.

While the Special Account Bill requires annual reports to be presented to Parliament, there is no requirement that the administration of the fund is audited. The need for proper oversight of Federal Government funding was demonstrated in June 2012 when the Australian National Audit Office (ANAO) reported that all applications from funding rounds one and two of the Private Irrigation Infrastructure Operators Program in New South Wales "*did not contain sufficient detail to facilitate a thorough*

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5 Dr Rhondda Dickson, Murray-Darling Basin Authority, *Committee Hansard*, Environment and Communications Legislation Committee, 23May 2012, p. 102.

6 Senate Standing Committee on Rural and Regional Affairs and Transport, Inquiry into the management of the Murray-Darling Basin System, *Committee Hansard*, 3 April 2012.

assessment, particularly in relation to addressing the economic/social criteria, environmental criteria and the projects' cost-benefit analyses".[7]

Therefore it is imperative all funds paid out of the Water for the Environment Special Account are subject to robust and regular audits so as not to replicate the inappropriate granting of Federal Government funds that has previously taken place.

Recommendation 5

The Water Amendment (Water for the Environment Special Account) Bill 2012 be amended to require the ANAO conduct an audit of the Special Account after the first year of operation, the third year of operation, and every three years after that, with specific attention to:

- **The financial performance of the account;**
- **The projects funded under the account, and the robustness of the funding process;**
- **The performance of these projects in relation to the outcomes under 86AA;**
- **Any related matters.**

Water Amendment (Long Term Average Sustainable Diversion Limit Adjustment) Bill 2012

I am broadly supportive of the Water Amendment (Long Term Average Sustainable Diversion Limit Adjustment) Bill 2012, however the Committee heard evidence raising concerns over the legality of this Bill.

The Conservation Council of South Australia, together with the Wilderness Society, argued that under the current Bill social and economic considerations will be elevated to equal status with environmental considerations:[8]

> Underlying this observation is a legal debate of a quite fundamental nature concerning the relationship between environmental, social and economic considerations in relation to the proposed Basin Plan. The government, through its statements in the explanatory memorandum, is perpetuating a highly contentious legal viewpoint that all three aspects may be considered simultaneously when producing the Basin Plan, and now in relation to an adjustment to the SDLs spelled out therein.[9]

Their submission continues:

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7 Australian National Audit Office, *Administration of the Private Irrigation Infrastructure Operators Program in New South Wales*, June 2012, p. 22.

8 Conservation Council of South Australia and the Wilderness Society, *Submission 20*, p. 6.

9 Ibid, p. 7.

> There is strong legal advice to the contrary… which suggests that socio-economic considerations may only be taken into account after the long-term average sustainable diversion limit has been determined by reference to the environmental sustainability needs of the MDB.[10]

Similarly, it is possible litigation will commence based on the proposition that the best available science has not been used when setting SDLs and that as a result, the environmental objectives of the Basin Plan will not be achieved.

This concern should be meaningfully addressed by the Federal Government before the Bill passes the Senate.

Further comments

Inquiry into the Management of the Murray-Darling Basin

It is worth noting that the abovementioned inquiry has not yet reported, nor is it due to report until February 6, 2013.

Furthermore, the concerns raised in the Committee's interim report have not yet been responded to by the Government or addressed meaningfully in any way.

Given this, it is worth questioning why the Government is seeking to push this legislation through Parliament before the end of 2012.

While there is no question that a long-term plan for the Murray-Darling Basin is of critical importance, the Government must also meaningfully address past and present failures in the management of the Murray-Darling Basin system as discussed throughout the abovementioned inquiry.

This includes responding to concerns raised about the lack of flexibility and equity in the criteria of established infrastructure funds, which have consistently disadvantaged early adopters of water efficiency measures in regions such as the Riverland in South Australia.

Amendments must be made to this legislation to ensure that early adopters of water efficiency measures are not disproportionately disadvantaged by water recovery targets as prescribed under the Basin Plan.

Senator Nick Xenophon

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10 Ibid.